

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

HARLAN PAGE CONFER III and
CHARLOTTE CLUFF CONFER,

Debtors.

Case No. 21-20167-A-13

BHS-1

MEMORANDUM

Argued and submitted on May 18, 2021

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances:

Michael O'Dowd Hays for Harlan Page Confer
III and Charlotte Cluff Confer; Barry H.
Spitzer for Jacob Watson and James Watson;
Kristen Koo for David P. Cusick, Chapter
13 trustee

1 Executory contracts may be rejected in Chapter 13. One day
2 before a foreclosure sale, octogenarian sellers contracted to sell
3 their home for one-half its value. Buyers have not yet paid the
4 purchase price; sellers have not conveyed title and remain in
5 possession. Sellers filed Chapter 13 and confirmed a plan rejecting
6 all executory contracts. Buyers move for stay relief to prosecute a
7 specific performance action for the sale contract. Should the court
8 grant the motion?

9 **I. FACTS**

10 **A. Harlan and Charlotte Confer, Their Home and Financial**
11 **Trouble**

12 Harlan Confer is an 86-year old retired Baptist minister and army
13 chaplain; Charlotte Confer (collectively "the Confers") is an 85-year
14 old retired nurse.

15 In 1986, the Confers purchased a home at 295 San Joaquin Drive,
16 Red Bluff, California. It is a four bedroom, two bathroom, 1,773
17 square foot home built in 1959. Prior to the events that form the
18 basis of this dispute, the Confers' home had a value of \$255,000-
19 280,000 and was encumbered by a first deed of trust in favor of New
20 Rez, LLC.

21 In 2010, the Confers received a home equity loan from Umpqua Bank
22 to build a small outbuilding behind their residence. The amount of
23 that loan was \$43,000; the loan was secured by a second deed of trust
24 against their home.

25 Thereafter, Harlan Confer used the couple's social security and
26 pension income to make unsecured loans to persons who were supposed to
27 use the monies to fund their college education and then repay the
28 Confers. When the Confers' borrowers did not do so, the Confers fell

1 behind in payments on the loans secured by the first and second deeds
2 of trust. New Rez, LLC commenced foreclosure proceedings.¹ The
3 foreclosure sale was noticed for Monday, January 27, 2020, at 2:00
4 p.m.

5 **B. The Residential Purchase Agreement**

6 During the evening before the foreclosure, Sunday, January 26,
7 2020, and mindful of the pending foreclosure sale, Edward Lenzer
8 ("Lenzer") of "eXp Realty," contacted the Confers at their home and
9 suggested a sale of the property to Jacob Watson and James Watson. He
10 promised the Confers \$25,000 cash, approximately, in exchange for a
11 deed to their home to the Watsons and the Watsons' agreement to pay
12 two trust deeds encumbering the property and costs of sale.
13 Initially, Harlan Confer was unwilling to sell, and asked Lenzer to
14 arrange a loan to cure the arrearages or to assist in consolidating
15 the two deeds of trust. Lenzer informed the Confers that the sale was
16 the only mechanism by which the equity in their home could be saved.
17 Harlan Confer remembers that he agreed to the sale, if and only if he
18 had a right to repurchase the property once he received the funds to
19 do so; the Watsons, speaking through Lenzer, dispute that Harlan
20 Confer conditioned the sale on such a repurchase provision.

21 The next morning, Lenzer returned to the Confers' home and
22 presented them with a Residential Purchase Agreement signed by the
23 Watsons. Under its terms, Jacob Watson and James Watson offered to
24 purchase 295 San Joaquin Drive, Red Bluff, California, from the
25 Confers for \$136,000. The Watsons promised to pay the Confers \$22,000

26
27 ¹ The record is unclear whether it was New Rez, LLC or Umpqua Bank that
28 prosecuted foreclosure proceedings. For the purposes of this motion, the
court assumes foreclosure was prosecuted by New Rez, LLC. But the true
identity of the foreclosing trust deed holder is not outcome-dispositive.

1 as a down payment and the balance, \$114,000, at or before the close of
2 escrow. Edward Lenzer, eXp Realty, represented both the Confers and
3 the Watsons in the transaction. Possession of the property was to be
4 turned over to the Watsons at the close of escrow.

5 Later that morning, the Confers signed the Residential Purchase
6 Agreement. Charlotte Confer delivered the signed sale agreement to
7 Lenzer at the situs of the foreclosure sale moments before the trustee
8 auctioned 295 San Joaquin Drive, Red Bluff, California. Lenzer
9 provided the auctioneer with proof that the arrearage had been paid
10 (apparently by the Watsons), and the auctioneer cancelled the
11 foreclosure sale.

12 Apparently, in their hurry to sign the agreement, the Confers
13 failed to sign and/or initial all necessary portions of the
14 Residential Purchase Agreement. During the late afternoon or early
15 evening hours of January 27, 2020, Lenzer returned to the Confers'
16 home to collect still further signatures. Lenzer rushed the Confers
17 to do so, stating that "he wanted to get home and not spend another
18 night in a motel." Harlan Confer decl. p. 5, lines 1-2, May 4, 2021,
19 ECF No. 40.

20 The Watsons did, in fact, make the \$22,000 payment called for by
21 the agreement. Of that amount, the Watsons paid the Confers \$19,968
22 directly, outside escrow; the remainder, approximately \$2,032, was
23 paid into escrow. But the Watsons did not deposit the balance of the
24 purchase price into escrow.

25 Later, the Confers declined to proceed with the sale.
26 Specifically, they refused to sign escrow instructions and they also
27 refused to execute a deed to the property. At all times pertinent
28 hereto, the Confers have remained in possession of 295 San Joaquin

1 Drive, Red Bluff, California.

2 The Confers, who did not wish to sell their home, attempted to
3 negotiate a settlement. But funding the settlement was a problem.
4 The Watsons wanted the Confers to honor their agreement to sell.
5 Settlement discussions broke down.

6 **C. The State Court Action**

7 In June 2020, the Watsons filed an action in state court, seeking
8 specific performance and damages. Steven M. Dean of the Dean Law
9 Firm, Inc. was counsel for the Watsons.² The complaint plead causes of
10 action for specific performance, breach of contract and fraud. It
11 plead that (1) the Confers owned 295 San Joaquin Drive, Red Bluff,
12 California; (2) the Confers entered into a Residential Purchase
13 Agreement to sell that property to the Watsons for \$136,000; (3) the
14 Watsons made an earnest money down payment of \$24,032 (\$22,000 of
15 which was paid directly to Confers); and (4) the Confers refused to
16 perform the purchase agreement notwithstanding receipt of \$22,000 from
17 the Watsons. The Residential Purchase Agreement was appended to the
18 complaint.

19 The Confers were served with the lawsuit but failed to make a
20 timely appearance.

21 After the Confers' default was entered, in October 2020, the
22 state court conducted a default prove up hearing. The court found
23 that: (1) there was a "valid written contract"³ between the Confers and
24

25 ² The court takes judicial notice of the Complaint, *Watson v. Confer*, No.
26 20CI000087 (Tehama County Superior Court June 8, 2020), attached as Exhibit 1
to Adversary Complaint, *Watson v. Confer*, 21-2024 (Bankr. E.D. Cal. April 27,
2021), ECF No. 1. Fed. R. Evid. 201.

27 ³ Facts not within the horizon of the Tehama County Superior Court make the
28 court's use of the phrase "valid written contract" unfortunate and make the
Watsons' dealings with the Confers more than a little troubling. First, the
Residential Purchase Agreement appears to have been unsolicited. Lenzer

1 the Watsons for the sale of 295 San Joaquin Drive, Red Bluff,
2 California, for \$136,000; (2) the Watsons paid \$22,000 (\$19,967.88
3 directly to Confers) in earnest money; (3) the Confers refused to
4 proceed with the sale; (4) the Confers remained in possession of the
5 property; and (5) the Watsons had no adequate remedy at law. The
6 court ordered the Confers to sign escrow instructions and to execute
7 and deliver a grant deed for 295 San Joaquin Drive, Red Bluff to the
8 escrow holder. It also ordered escrow to close "[two] business days

9
10 decl. 2:3-13, April 15, 2021, ECF No. 23. Second, it appears that the
11 purchase was not for the Watsons' use as a personal residence, Lenzer decl.
12 2:7-15, May 7, 2011, ECF No. 44 (describing the subject property as "worth
13 the investment by them"), Harlan Confer p. 4, May 4, 2021, ECF No. 40 ("He
14 [Lenzer] informed me that they had a couple of investors that might be
15 willing to agree but that he had to talk with them first"); *contra*
16 Residential Purchase Agreement ¶ 9(A), April 15, 2021, ECF No.24 (suggesting
17 use as a personal residence); see also Cal. Civ. Code §
18 1695.1(a)(1) (excluding purchases for use as the buyer's personal residence).
19 Third, at the time of the transaction in dispute, Harlan Confer and Charlotte
20 Confer were 86 and 85 years old, respectively. Charlotte Confer decl. p. 2,
21 May 4, 2021, ECF No. 39. Fourth, the Watsons first approached the Confers 20
22 hours before the Confers' first deed of trust holder was to conduct a
23 foreclosure sale of 295 San Joaquin Drive, Red Bluff, California, and the
24 Watsons made their purchase offer 4 hours before the foreclosure sale.
25 Lenzer decl. 2:4-6, May 7, 2021, ECF No. 44; Lenzer decl. 2-13, April 15,
26 2021, ECF No. 23; Charlotte Confer p. 3, May 4, ,2021, ECF No. 39. Fifth,
27 the Watsons' purchase offer was for one-half the value of home. *Compare*
28 Order for Specific Performance 2:9-16, April 15, 2021, ECF No. 24, with
Schedule A/B, February 1, 2021, ECF No. 14 (purchase price of \$136,000
against a value of \$255,000). Sixth, eXp Realty (acting through Edward J.
Lenzer) acted on behalf of both the Watsons and the Confers. Residential
Purchase Agreement pp. 1, 10, April 15, 2021, ECF No. 24. Seventh, the
Watsons and Lenzer appear to have violated the Home Equity Sales Contract
Act, Cal. Civ. Code § 1695 et seq., by: (A) failing to give the Confers
statutorily mandated notice of right to cancel the contract, Cal. Civ. Code §
1695.5, Residential Purchase Agreement ¶ 5(B) (omitting reference to Home
Equity Sales Contract Act); (B) failing to include statutorily required
information, Cal. Civ. Code § 1695.3; (C) paying consideration prior to
expiration of time to rescind, Cal. Civ. Code §1695.6(b)(4); and (D) acting
unconscionably, i.e., payment of one-half price to octogenarian sellers hours
before foreclosure sale, Cal. Civ. Code §§ 1695.13-1695.14. This court
believes that the buyers/Lenzer's actions give rise to causes of action
against them for (1) Watsons: violation of Home Equity Sales Contract Act,
Cal. Civ. Code § 1695.7 (actual and treble damages, as well as attorney's
fees, Cal. Civ. Code § 1695.7); (2) Lenzer: breach of fiduciary duty,
Restatement (Second) Agency § 387 et seq. (actual damages); and (3) Watsons
and Lenzer: financial abuse of an elder person, Cal. Welfare & Inst. Code §§
15610.30, 15657.5 (actual and punitive damages as well as attorney's fees).

1 after [the Confers] have deposited the [d]eed and escrow instructions
2 with [the escrow holder] and [the Watsons] have deposited the cash
3 balance of the purchase price." Order for Specific Performance 3:18-
4 4:15, *Watson v. Confer*, No. 20CI000087 (Tehama County Superior Court
5 October 7, 2020). The court reserved the issue of damages for later
6 determination. *Id.* at 5:20-21.

7 The Confers did not sign the escrow instructions or convey title.

8 The monetary component of the state court action was not proved
9 up and no judgment was entered.

10 **D. Harlan Confer and Charlotte Confer file Chapter 13**
11 **Bankruptcy and Confirm a Plan**

12 In January 2021, the Confers filed a Chapter 13 bankruptcy. As
13 pertinent here, they claimed ownership in 295 San Joaquin Drive, Red
14 Bluff, California, which they valued at \$255,000. Their schedules
15 indicate that their residence at 295 San Joaquin Drive, Red Bluff,
16 California was encumbered by a first deed of trust in favor of New
17 Rez, LLC and a second deed of trust in favor of Umpqua Bank. Both
18 were in default. The Confers claimed a homestead exemption in their
19 San Joaquin Drive residence in the amount of \$300,000.⁴ Schedule C, ECF
20 No. 13. Their Schedule E/F, which lists "Creditors Who Have Unsecured
21 Claims," included the following scheduled debt: "Dean Law Firm, Inc.,
22 1610 West Street, Ste 2, P.O. Box 994134, Redding, CA 96099-4134"⁵ in
23 the amount of \$32,174.42." *Id.* at Schedule E/F. In describing the
24 debt, the Confers categorized the debt as "Other" and added the
25 following verbiage "Attorneys for Jacob and James Watson in Case No.

26 _____
27 ⁴ Cal. Code of Civ. Proc. 703.740.

28 ⁵ That address is consistent with Steven Dean/Dean Law Firm's address as
indicated in the pleadings filed in *Watson v. Confer*, No. 20CI000087 (Tehama
County Case No. 2020).

1 20CI000087 in Tehama County Superior Court, Red Bluff..." *Id.* Schedule
2 G, which should list "Executory Contracts and Unexpired Leases," was
3 left blank. *Id.* at Schedule G. The creditors' matrix filed in support
4 of the petition included the "Dean Law Firm, Inc.," at that firm's
5 correct address, but it did not include Jacob Watson or James Watson
6 specifically.

7 The Confers also filed a Chapter 13 plan. Chapter 13 Plan,
8 January 25, 2021, ECF No. 12. The plan provided for 60 monthly
9 payments: \$1,518 per month from February 2021 to September 25, 2023,
10 and then \$1,709 per month for the remainder of the plan. *Id.* at §§
11 2.01, 2.03, 7.0. From those funds, the Chapter 13 trustee was to pay
12 creditors by class. The plan provided for payment of administrative
13 expenses, i.e., trustee and debtor's counsel's fees, as well as
14 payment of ongoing and delinquent amounts due to the first and second
15 trust deed holders, i.e., New Rez, LLC and Umpqua Bank. *Id.* at §
16 3.07. Unsecured creditors were provided for by the plan, but the
17 Confers estimated that the dividend paid to that class would be "0%."
18 *Id.* at § 3.14. That plan rejected all executory contracts. *Id.* at §§
19 4.01, 4.02. It also revested all property of the estate in the
20 debtors upon confirmation. *Id.* at § 6.01.

21 The Clerk of the Court served the Notice of Chapter 13 Bankruptcy
22 Case, February 9, 2021, ECF No. 15, and the Confers' Chapter 13 Plan,
23 January 25, 2021, ECF No. 15, on the creditors, including the Dean Law
24 Firm, Inc., who was included on the Confers' creditors' matrix.
25 Certificate of Notice, February 11, 2021, ECF Nos. 16-17. Because the
26 Watsons were not included on the creditors' matrix, they were not
27 served with the Notice of Chapter 13 Bankruptcy Case, except through
28 counsel. The Notice of the Chapter 13 Bankruptcy Case sets the

1 deadlines for objecting to the claims of exemptions, objection to plan
2 confirmation and filing adversary proceedings to challenge the
3 discharge of certain debts. Notice §§ 8, 9, February 9, 2021, ECF No.
4 15.

5 The trustee convened, and concluded, the meeting of creditors.

6 After the deadlines for objection to the debtors' claim of
7 exemption and to confirmation of the plan passed—and neither the
8 trustee nor any party in interest having objected, the Confers'
9 Chapter 13 plan was confirmed.

10 Neither the Watsons, nor Lenzer, filed a Proof of Claim, and the
11 non-governmental claims bar date has passed.

12 The Watsons subsequently filed an adversary proceeding to except
13 the Confers' debt to them, contending that the debt incurred to them
14 arose from fraud and/or constituted a willful and malicious injury.
15 11 U.S.C. § 523(a)(2)(A), (a)(6).⁶ *Watson v. Confer*, No. 21-2024
16 (Bankr. E. D. Cal. 2021).

17 **II. PROCEDURE**

18 The Watsons move for stay relief to enforce the order for
19 specific performance issued by the state court. In support of their
20 position, they argue that: (1) they were not given notice of the
21 Confers' Chapter 13 petition; (2) the state court order of specific
22

23 ⁶ This court lacks subject matter jurisdiction over this adversary proceeding
24 insofar as it raises the willful and malicious exception to discharge, 11
25 U.S.C. § 523(a)(6); see *Toste v. Smedberg (In re Toste)*, 2014 WL 3908139 (9th
26 Cir. BAP August 12, 2014) (recognizing the discharge of 11 U.S.C. § 1328(a)
27 does not except willful and malicious injuries from discharge and that only
28 the hardship discharge of 11 U.S.C. § 1328(b)-(c) excepts those debts from
the Chapter 13 discharge). Since the Confers have not yet sought—and may
never seek—a hardship discharge, the court lacks subject matter jurisdiction
over any § 523(a)(6) cause of action. Fed. R. Bankr. P. 4007(d). The court
has issued an Order to Show Cause regarding dismissal. Order, *Watson v.*
Confer, No. 21-2024 (Bankr. E.D. Cal. 2021), ECF No. 7.

1 performance extinguished the Confers' rights to the 295 San Joaquin
2 Drive residence; (3) the state court's findings preclude this court
3 from denying stay relief, i.e., the *Rooker-Feldman* doctrine; and (4)
4 cause exists to allow the state court to complete the specific
5 performance portion of their action. The Confers oppose the motion.

6 **III. JURISDICTION**

7 This court has jurisdiction, 28 U.S.C. §§ 1334, 157 (a), (b) (1);
8 General Order No. 182 of the U.S. District Court for the Eastern
9 District of California, and this is a core proceeding in which this
10 court may enter final orders and judgment, 28 U.S.C. § 157(b) (2) (A),
11 (G).

12 **IV. LAW**

13 Filing a Chapter 13 petition invokes the stay. 11 U.S.C. §§
14 103(a), 362(a). "The stay protects the [1] debtor, [2] the debtor's
15 property, and [3] property of the estate." *In re Oakhurst Lodge, Inc.*,
16 582 B.R. 784, 791 (Bankr. E.D. Cal. 2018), citing *In re Casgul of*
17 *Nevada, Inc.*, 22 B.R. 65, 66 (9th Cir. BAP 1982).

18 (a) Except as provided in subsection (b) of this section, a
19 petition filed under section 301, 302, or 303 of this
20 title, or an application filed under section 5(a) (3) of the
Securities Investor Protection Act of 1970, operates as a
stay, applicable to all entities, of--

21 (1) the commencement or continuation, including the
22 issuance or employment of process, of a *judicial*,
23 administrative, or other *action or proceeding against*
24 the debtor that was or could have been commenced before
the commencement of the case under this title, or to
recover a claim against the debtor that arose before
the commencement of the case under this title;

25 (2) the enforcement, *against the debtor* or against
26 property of the estate, of a judgment obtained before
the commencement of the case under this title;

27 (3) any act to obtain possession of property of the
28 estate or of property from the estate or to exercise
control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) *any act to create*, perfect, or enforce *against property of the debtor* any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) *any act to collect*, assess, or recover a claim *against the debtor* that arose before the commencement of the case under this title....

11 U.S.C. § 362(a) (emphasis added).

Ordinarily, the stay terminates either upon discharge or when the property is no longer property of the estate.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied....

11 U.S.C. § 362(c) (1), (c) (2).

While the stay remains effective, creditors may not take any of the acts described in § 362(a). Acts in violation of the stay are void, not voidable. *In re Gruntz*, 202 F.3d 1074, 1081-1082 (9th Cir. 2000); *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 586 (9th Cir. 1993); *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992) (acts in violation of the stay may not be cured or ratified). Persons who violate the stay may be held to answer for actual and

1 punitive damages, as well as attorney's fees, 11 U.S.C. § 362(k), or
2 may be held in contempt of court. *In re Pace*, 67 F.3d 187, 193-194
3 (9th Cir. 1995).

4 Persons wishing to proceed against the debtor, the debtor's
5 property or property of the estate must seek, and obtain, leave of the
6 bankruptcy court. 11 U.S.C. § 362(d).

7 (d) On request of a party in interest and after notice and
8 a hearing, the court shall grant relief from the stay
9 provided under subsection (a) of this section, such as by
terminating, annulling, modifying, or conditioning such
stay--

10 (1) for cause, including the lack of adequate
11 protection of an interest in property of such party in
interest;

12 (2) with respect to a stay of an act against property
13 under subsection (a) of this section, if--

14 (A) the debtor does not have an equity in such
property; and

15 (B) such property is not necessary to an effective
16 reorganization....

17 11 U.S.C. § 362(d) (1), (d) (2).

18 Relief from the stay is sought by motion. Fed. R. Bankr. P.
19 4001(a) (1). When such a motion is presented, the parties share the
20 burden of proof.

21 (g) In any hearing under subsection (d) or (e) of this
22 section concerning relief from the stay of any act under
subsection (a) of this section--

23 (1) the party requesting such relief has the burden of
24 proof on the issue of the debtor's equity in property;
and

25 (2) the party opposing such relief has the burden of
26 proof on all other issues.

27 11 U.S.C. § 362(g).

28 "Cause" is not a defined term; what constitutes cause is

determined on a case-by-case basis. *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). In some instances, cause includes allowing a creditor to conclude pre-bankruptcy state court litigation that fixes the parties rights. *In re Robbins*, 310 B.R. 626, 629-630 (9th Cir. BAP 2004) (perfection of prejudgment attachment lien); cf. *In re Perl*, 811 F.3d 1120, 1127 (9th Cir. 2016). In determining whether to allow litigation outside the bankruptcy court, most courts consider multiple factors. *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2nd Cir. 1990).

V. DISCUSSION

Long standing Ninth Circuit authority controls this dispute. In *In re Alexander*, a case that is [almost] indistinguishable from the present dispute, the circuit held that a real estate sales contract was executory and subject to rejection in a Chapter 13 plan, 11 U.S.C. § 1322(b)(7), even though the seller had deposited into escrow all funds necessary to close but where the buyer had neither “give[n] up possession” nor “convey[ed] title”. 670 F.2d 885, 887-888 (9th Cir. 1982).

Alexander differs from the present case in that the buyers in the present case sought, and the state court issued, an order compelling the sellers, i.e., Harlan Confer and Charlotte Confer, to specifically perform their contract with the Watsons. In the Watsons’ view, that order brings the case within the rule articulated in *Perl*, 811 F.3d at 1127 (which held that a writ of possession, after the conclusion of a foreclosure but prior to bankruptcy, extinguished all of the debtor’s legal and equitable interests in the property). This court disagrees. *Perl* involves a post-foreclosure sale unlawful detainer proceeding in which a writ of possession was issued. But *Perl*’s holding is based on

1 California Civil Code § 2924h(c), which specifically extinguishes the
2 former owner's rights after nonjudicial foreclosure. That section
3 reads,

4 For the purposes of this subdivision, the trustee's sale
5 shall be deemed final upon the acceptance of the last and
6 highest bid, and shall be deemed perfected as of 8 a.m. on
7 the actual date of sale if the trustee's deed is recorded
8 within 18 calendar days after the sale, or the next
9 business day following the 18th day if the county recorder
10 in which the property is located is closed on the 18th day.

11 California Civil Code § 2924h(c).

12 In contrast, a decree of specific performance is an order only
13 compelling a seller of real estate to complete the transaction, e.g.,
14 convey title, *Rogers v. Davis*, 28 Cal.App.4th 1215, 1221 (1994). It
15 does not extinguish the sellers' legal and/or equitable rights.
16 Moreover, the Tehama County Superior Court did not consider the
17 seller's rights in its order. Order for Specific Performance 4:20-
18 5:3, *Watson v. Confer*, No. 20CI000087 (Tehama County Superior Court
19 April 15, 2021), ECF No. 24 (authorizing the Watsons to use an
20 expedited contempt mechanism to enforce the specific performance
21 order).

22 **A. The State Court's Specific Performance Order Did Not**
23 **Extinguish the Confers' Rights in 295 San Joaquin Drive**

24 When a Chapter 13 bankruptcy is filed an estate is created. 11
25 U.S.C. § 541(a). That estate holds "all legal or equitable interests
26 of the debtor in property as of the commencement of the case." *Id.*
27 State, not federal, law "determine[s] property interests in bankruptcy
28 proceedings." *Perl*, 811 F.3d at 1127; *Butner v. United States*, 440
U.S. 48, 54-55 (1979). It is only when the debtor's legal and
equitable interests have both been extinguished prior to the petition
that a debtor, and by extension the estate, has no interest in

1 property. *Perl*, at 1127-1130 (properly noticed non-judicial
2 foreclosure sale and timely recordation of deed extinguishes legal
3 interest, Cal. Civ. Code § 2924h(c), writ of possession extinguishes
4 equitable right of possession after foreclosure sale).

5 California courts have long understood that a buyer who obtains a
6 specific performance decree becomes the equitable owner of the
7 property, and the seller retains legal title until the buyer fully
8 performs the contract. *Willis v. Wozencraft*, 22 Cal. 607, 616-617
9 (1863); *Miller v. Waddingham*, 91 Cal. 377, 380 (1891).

10 However, a contract for the sale of real estate may be
11 specifically enforced by the purchaser, *equity regarding as*
12 *done that which ought to be done; it considers the*
13 *purchaser to be the owner of the land. The vendor who*
14 *retains the legal title as security for the payment of the*
15 *purchase price* has no greater rights than he would possess
16 if he had conveyed the land and taken back a mortgage. The
17 vendee, particularly after he goes into possession of the
18 land under an executory contract, is for all purposes the
19 owner and the vendor retains mere legal title.

20 *Elliott v. McCombs*, 17 Cal.2d 23, 31 (1941) (internal citations
21 omitted) (emphasis added).

22 Like *Elliott*, the state court issued a decree of specific
23 performance. Order of Specific Performance, *Watson v. Confer*, No.
24 20CK000087 (Tehama County Superior Court October 7, 2020), ECF No. 24.
25 It ordered the Confers to sign escrow instructions and a deed. *Id.* at
26 3:18-4:8. It also threatened the Confers with contempt for non-
27 compliance. *Id.* at 4:20-5:3. But it went no further; such an order is
28 not self-effectuating. Had the Watsons wished to enforce that order
they would have needed to ask the court to appoint the Clerk of the
Court as elisor to sign the escrow instructions and deed on the
Confers' behalf. Cal. Code of Civ. Proc. § 128(a)(4); *Blueberry*
Properties, LLC v. Chow, 230 Cal.App.4th 1017, 1020-1021 (2014); *Rayan*
v. Dykeman, 224 Cal.App.3d 1629, 1635 fn. 2 (1990). The Watsons did

1 not do so. Neither the escrow instructions, nor the deed, were signed
2 by the Confers or the Clerk of the Tehama County Superior Court and
3 there is no indication that the Watsons delivered the balance of the
4 purchase price into escrow. For these reasons, the Confers retained
5 legal title to 295 San Joaquin Drive, Red Bluff on the date of the
6 petition.

7 **B. The State Court's Order Does Not Bind this Court**

8 The Watsons argue that the *Rooker-Feldman* doctrine controls this
9 court's decision. It does not. The Watsons conflate the *Rooker-*
10 *Feldman* doctrine with the doctrine of res judicata (claim and issue
11 preclusion). The *Rooker-Feldman* doctrine is a jurisdictional
12 limitation on this court; it "preclude[s] "de facto appeals" from
13 state court judgments—i.e., when a federal plaintiff asserts as a
14 legal wrong an allegedly erroneous decision by a state court and seeks
15 relief from a state court judgment based on that decision." Virginia
16 A. Phillips and Karen L. Stevenson, *California Practice Guide: Federal*
17 *Civil Procedure Before Trial*, Subject Matter Jurisdiction § 2:4945
18 (Rutter Group 2021); 28 U.S.C. § 1257. It "applies only when the
19 federal plaintiff was a party to the state case and is challenging an
20 adverse decision by the state court." *Id.* at § 2:4950. That is not
21 the case here.

22 In contrast, "[f]ederal courts must give the same res judicata
23 effect to state court judgments that courts of that state would give
24 (28 U.S.C. § 1738—"full faith and credit")." *Id.* Here, the debtors
25 are not asking this court to review, reverse or modify the state
26 court's order of specific performance; rather, they are resisting the
27 Watsons' motion for stay relief and are doing so under well-settled
28 circuit precedent. *Alexander*, 670 F.2d at 887-888.

1 **1. Res Judicata - Issue preclusion**

2 In federal courts, issue preclusion is determined by law of the
3 state in which the underlying judgment was rendered. *Gayden v.*
4 *Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995). "The
5 party seeking to employ issue preclusion bears the burden of showing
6 its applicability." *In re Javahery*, No. 2:14-BK-33249-DS, 2017 WL
7 971780, at *5 (B.A.P. 9th Cir. Mar. 14, 2017), *aff'd*, 742 F. App'x 307
8 (9th Cir. 2018), citing *Vella v. Hudgins*, 20 Cal. 3d 251, 257 (1977).
9 California courts may apply issue preclusion when the following five
10 elements are satisfied.

11 First, the issue sought to be precluded from relitigation
12 must be identical to that decided in a former proceeding.
13 Second, this issue must have been actually litigated in the
14 former proceeding. Third, it must have been necessarily
15 decided in the former proceeding. Fourth, *the decision in*
the former proceeding must be final and on the merits.
Finally, the party against whom preclusion is sought must
be the same as, or in privity with, the party to the former
proceeding.

16 *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (emphasis
17 added).

18 California recognizes issue preclusion for default judgments but
19 limits its application.

20 The mere fact that "judgment was secured by default does
21 not warrant the application of a special rule." *Williams v.*
Williams (In re Williams' Estate), 36 Cal.2d 289, 223 P.2d
22 248, 252 (1950). *California law does, however, place two*
limitations on this general principle. The first is that
collateral estoppel applies only if the defendant "has been
personally served with summons or has actual knowledge of
the existence of the litigation." *In re Harmon*, 250 F.3d at
23 1247 (quoting *Williams*, 223 P.2d at 254). Collateral
24 estoppel, therefore, only applies to a default judgment to
25 the extent that the defendant had actual notice of the
26 proceedings and a "full and fair opportunity to
litigate." *Id.* at 1247 n. 6.

27 *The second limitation, in the context of a default*
judgment, is that a decision has a preclusive effect in
later proceedings "only where the record shows an express
28 *finding upon the allegation" for which preclusion is*

1 sought. *Williams*, 223 P.2d at 254. But, as we recognized
2 in *In re Harmon*, "the express finding requirement can be
3 waived if the court in the prior proceeding necessarily
4 decided the issue." 250 F.3d at 1248. In such
circumstances, an express finding is not required because
"if an issue was necessarily decided in a prior proceeding,
it was actually litigated." *Id.*

5 *In re Cantrell*, 329 F.3d 1119, 1123-24 (9th Cir. 2003) (emphasis
6 added).

7 Two of the elements for application of issue preclusion are
8 lacking here. First, the state court judgment was not final. A
9 judgment is final for the purposes of issue preclusion "while an
10 appeal remains pending or while the period for filing an appeal has
11 not yet expired. *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th
12 Cir. 2007) (applying California law); *Franklin & Franklin v. 7 Eleven*
13 *Owners for Fair Franchising*, 85 Cal.App.4th 1168, 1174 (2000); see
14 also Cal. R. of Court 8.104(a)(1)(C) (ordinarily an appeal must be
15 filed not later than 180 days after entry of judgment)"; *Javahery*,
16 2017 WL 971780 at *5. Here, the court issued a specific performance
17 order. But judgment was never entered and the time for an appeal did
18 not expire. As a result, issue preclusion is not applicable.

19 Second, because the state court judgment occurred in the context
20 of default judgment, *res judicata* may only be applied where the record
21 contains express findings on the issue for which preclusion is sought
22 or, absent express findings, where the issue was necessarily decided.
23 *Cantrell*, 329 F.3d at 1123-24. Stay relief and rejection of executory
24 contracts are federal-not state-issues, 11 U.S.C. §§ 362(d),
25 365(d)(2); *Gruntz*, 202 F.3d at 1083-1084. As a consequence, these
26 issues were not and could not have been considered by the state court.
27 For these reasons, *res judicata* is not applicable here.
28

1 **2. Rooker-Feldman**

2 "Under the [Rooker-Feldman] doctrine, inferior federal courts
3 are precluded from reversing or modifying a state court judgment on
4 the merits where the issues decided in the state court are
5 'inextricably intertwined' with the federal issue before the court."
6 *Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carrut LLP (In re*
7 *Pavelich)*, 229 B.R. 777, 782 (9th Cir. BAP 1999); *Exxon Mobile Corp.*
8 *v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292-293 (2005); *Rooker v.*
9 *Fidelity Trust Co.*, 263 U.S. 413, 415 (1923); *District of Columbia*
10 *Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983). State court
11 losers may not challenge that judgment in a lower federal court.
12 *Johnson v. De Grandy*, 512 U.S. 997, 1005-1006 (1994).

13 Rooker-Feldman has four elements:

14 [1] the federal court plaintiff must have lost in state
15 court; [2] the plaintiff must complain of injuries caused
16 by the state court judgment; [3] the plaintiff must be
17 asking the district court to review and reject that
18 judgment; and [4] the state court judgment must have been
rendered before the district court proceedings commenced
(i.e., Rooker-Feldman has no application to federal court
suits proceeding in parallel with ongoing state court
litigation).

19 Virginia A. Phillips and Karen L. Stevenson, *California Practice*
20 *Guide: Federal Civil Procedure Before Trial*, Subject Matter
21 Jurisdiction § 2:4946 (Rutter Group 2021).

22 Two exceptions to the Rooker-Feldman doctrine exist: writs of
23 habeas corpus, See *Plyler v. Moore*, 129 F.3d 728, 732 (4th Cir. 1997);
24 *Ritter v. Ross*, 992 F.2d 750, 753 (7th Cir. 1993); *Blake v. Papadacos*,
25 953 F.2d 68, 71 n. 2 (3d Cir. 1992); and core proceedings in
26 bankruptcy cases. *Gruntz*, 202 F.3d at 1083-1084 (bankruptcy courts
27 have exclusive jurisdiction over core matters); *In re Dunbar*, 245 F.3d
28 1058, 1061-1064 (9th Cir. 2001); *In re McGhan*, 288 F.3d 1172, 1181-

1 1182 (9th Cir. 2002); March, Ahart & Shapiro, *California Practice*
2 *Guile: Bankruptcy*, Governing Law, Jurisdiction and Venue § 1:275
3 (Rutter Group 2020).

4 Even if the court construed the debtor's arguments as a request
5 to review the state court's order for specific performance, it would
6 fall within the bankruptcy core matter exception to the *Rooker-Feldman*
7 doctrine. The scope of the stay and the decision to modify, or not to
8 modify it, are core and fall within the exclusive jurisdiction of this
9 court. 28 U.S.C. §§ 157(b) (2) (A), (G), 1334(b); *Gruntz*, 202 F.3d at
10 1083-1084. Likewise, the assumption or reject of executory leases fall
11 within this court's exclusive jurisdiction. 28 U.S.C. §
12 157(b) (2) (A) (O); *Alexander*, 670 F.2d at 887-888; *In re Turbowind*,
13 *Inc.*, 42 B.R. 579, 583 (Bankr. S.D. Cal. 1984). For these reasons,
14 the *Rooker-Feldman* doctrine is not applicable here.

15 **C. The Confirmed Plan Binds the Watsons**

16 As a rule, a confirmed plan binds the debtors and their
17 creditors. "The provisions of a confirmed plan bind the debtor and
18 each creditor, whether or not the claim of such creditor is provided
19 for by the plan, and whether or not such creditor has objected to, has
20 accepted, or has rejected the plan." 11 U.S.C. § 1327(a). "After
21 confirmation, creditors ordinarily cannot assert any interest other
22 than as provided in the plan." March, Ahart & Shapiro, *California*
23 *Practice Guile: Bankruptcy*, Governing Law, Chapter 13 Cases § 13:1090
24 (Rutter Group 2020), citing *In re Evans*, 30 B.R. 530, 531-532 (9th Cir
25 BAP 1983).

26 But creditors without notice of the Chapter 13 case are not bound
27 by the terms of a confirmed plan. *In re Linkous*, 990 F.2d 160, 162
28 (4th Cir. 1993); *Aboody v. U.S. (In re Aboody)*, 223 B.R. 36, 40 (1st

1 Cir. BAP 1998). In most instances, creditors receive notice of a
2 Chapter 13 case when the Clerk of the Court serves the Notice of
3 Chapter 13 Bankruptcy Case. 11 U.S.C. §§ 342(a), 521(1) (debtor must
4 schedule the names and addresses of all creditors); Fed. R. Bank. P.
5 2002(a)(1), (b), (f); Official Form 309. The Clerk of the Court
6 serves that notice on the list of creditors provided by the debtor.

7 *In a voluntary case, the debtor shall file with the*
8 *petition a list containing the name and address of each*
9 *entity included or to be included on Schedules D, E/F, G,*
10 *and H as prescribed by the Official Forms. If the debtor is*
11 *a corporation, other than a governmental unit, the debtor*
12 *shall file with the petition a corporate ownership*
13 *statement containing the information described in Rule*
14 *7007.1. The debtor shall file a supplemental statement*
15 *promptly upon any change in circumstances that renders the*
16 *corporate ownership statement inaccurate.*

17 Fed. R. Bankr. P. 1007(a)(1) (emphasis added).

18 But notice of the Chapter 13 case served only on the creditor's
19 attorney is sufficient if there is "a nexus between the creditor's
20 retention of the attorney and the creditor's claim against the debtor.
21 *Vicenty v. Sandoval (In re San Miguel Sandoval)*, 327 B.R. 493, 508
22 (1st Cir. BAP 2005); *In re Schicke*, 290 B.R. 792, 802-803 (10th Cir.
23 BAP 2003).

24 Here, the Watsons were omitted from the list of creditors filed
25 by the debtor. Verification of Master Address List, January 20, 2021,
26 ECF No. 2. But Steven Dean of the Dean Law Firm, Inc., who
27 represented the Watsons in their dispute with the Confers, was
28 included on the Verification of Master Address List and did received
timely notice of the Chapter 13 case. This is precisely the nexus
contemplated by *Sandoval* and by *Schicke*. The Watsons had notice of
the Confers' chapter 13 bankruptcy and are bound by the terms of the
confirmed plan.

1 Here, the plan rejected all executory contracts. The Confers'
2 plan provided:

3 Debtor assumes the executory contracts and unexpired listed
4 below. Debtor shall pay directly to the other party to the
5 executory contract or unexpired lease, before and after
6 confirmation of this plan and whether or not a proof of
7 claim is filed, all post-petition monthly payments required
8 by the lease or contract. Unless a different treatment is
9 required by 11 U.S.C. § 365(d)(1) and is set out in section
10 7, the Nonstandard Provisions pre-petition arrears shall be
11 paid in full. Trustee shall pay the monthly dividend
12 specified in the table below on account of those arrears.

13 Any executory contract or unexpired lease not listed...below
14 is rejected.

15 Name of Other Party to Executory Contract/Unexpired Lease
16 [debtors inserted the word] '-None-.'

17 Plan §§ 4.01-4.02, January 25, 2021, ECF No. 12; see also Order
18 Confirming Plan, April 16, 2021, ECF No. 27. That the Confers did not
19 identify the Watsons' interest as an executory contract does not
20 affect that result.

21 The Confers' schedules and plan signal treatment of the Watsons'
22 claim as an unsecured debt and rejection of the executory contract.
23 The Watsons had specific and timely notice of the case, the deadlines,
24 and their treatment under the plan through their counsel Steven Dean.
25 As a result, at least absent revocation of the confirmation order, 11
26 U.S.C. § 1330, conversion, 11 U.S.C. § 348(c), *Harris v. Viegelahn*,
27 575 U.S. 510 (2015), or dismissal, 11 U.S.C. § 349, the plan binds the
28 Watsons, and the Residential Purchase Agreement has been properly
rejected and is of no force or effect.

29 **D. Stay Relief**

30 **1. As to the estate**

31 As to the estate, the stay lifts when the property is no longer
32 property of the estate. 11 U.S.C. § 362(c)(1). Unless the plan or
33

1 order confirming the plan provides otherwise, confirmation of a
2 Chapter 13 plan revests property in the debtor. 11 U.S.C. § 1306(b),
3 1327(b); *California Franchise Tax Board v. Jones (In re Jones)*, 657
4 F.3d 921, 927-930 (9th Cir. 2011).

5 Here, the plan revested property in the debtor upon confirmation.
6 Plan § 6.01, January 25, 2021, ECF No. 12. As a matter of law, the
7 stay lifted as to property of the estate upon plan confirmation.
8 Order, April 16, 2021, ECF No. 27. As to the estate, the issue is
9 moot.

10 **2. As to the debtors and the debtors' property**

11 As to the debtors and their property, including 295 San Joaquin
12 Drive, Red Bluff, California, the stay remains in effect. 11 U.S.C. §
13 362(c)(2) (stay remains until the case is closed or dismissed or a
14 discharge is granted).

15 Relief may be granted for cause or because there is no equity in
16 the property and the property it is not necessary for an effective
17 reorganization. 11 U.S.C. § 362(d). Cause does not exist. 11 U.S.C.
18 § 362(d)(1). The Confers have effectively rejected their executory
19 contract with the Watsons and have elected to treat them as unsecured
20 creditors. As a consequence, the existence of inchoate specific
21 performance litigation in state court does not constitute cause for
22 stay relief.

23 Moreover, the Confers have equity in 295 San Joaquin. Equity
24 means the fair market value of the property less the amount due on
25 secured claims. *In re Mellor*, 734 F.2d 1396, 1400, fn. 2 (9th Cir.
26 1984); *Stewart v. Gurley*, 745 F.2d 1194, 1196 (9th Cir. 1984). The
27 property is valued at \$255,000. Schedule A/B, February 1, 2021, ECF
28 No. 13; see also Decl. Charlotte Confer p. 2, May 4, 2021, ECF No. 39

1 (valuing property \$280,0000). The first trust deed holder, New Rez,
2 LLC is owed \$49,688. Proof of Claim 6-1. The second trust deed
3 holder is owed \$46,036. Proof of Claim 3-1. The Confers' equity is
4 \$159,276. They have exempted \$300,000. Equity exits. This court will
5 not grant stay relief under § 362(d)(2).

6 As a result, as to the debtors and their property, the motion
7 will be denied.

8 **VI. CONCLUSION**

9 As to the estate, the motion will be denied as moot; as to the
10 debtors and their property, including 295 San Joaquin Drive, Red
11 Bluff, California, the motion will be denied.

12 To be clear: Harlan Confer, Charlotte Confer and all of their
13 property, e.g., 295 San Joaquin Drive, Red Bluff, California, remain
14 under the wings of this court and continue to be protected by the
15 stay. 11 U.S.C. § 362(a)(1), (a)(5), (a)(6). Any further prosecution
16 of *Watson v. Confer*, No. 20CI000087 (Tehama County Superior Court June
17 8, 2020), or any action that arose out of the events described
18 therein, whether against Harlan Confer and/or Charlotte Confer
19 personally or to divest them of title, e.g., specific performance,
20 will result in void orders and judgments and will subject all persons
21 participating in that endeavor to an action for damages and/or
22 contempt proceedings before this court.

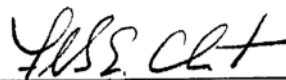
23 Assuming that the confirmation order is not revoked, the case is
24 neither dismissed nor converted, and that that Harlan Confer and
25 Charlotte Confer receive their discharge, any debt (including specific
26 performance of the Residential Purchase Agreement)⁷ will be forever

27
28 ⁷ Excepting those debts determined non-dischargeable in *Watson v. Confer*, No. 21-2024 (Bankr. E. D. Cal. 2021).

1 unenforceable. 11 U.S.C. § 524(a).

2 The court will issue an order from chambers.

3 **Dated:** June 08, 2021

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5 Fredrick E. Clement
6 United States Bankruptcy Judge
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

Attorney for the Debtor(s)	Barry Spitzer 980 9 th Street, Ste 380 Sacramento, CA 95814
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
Nancy Lee 2763 Camino Del Rio S. San Diego, CA 92108	Harlan Confer 295 San Joaquin Drive Red Bluff, CA 96080
Charlotte Confer 295 San Joaquin Drive Red Bluff, CA 96080	Dean Law Firm Inc. PO Box 994134 Redding, CA 96099-4134